

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

BERNARD JOSEPH ROSA, JR.
Sebastopol, California

Certified Public Accountant
Certificate No. 146~~6~~⁹
6

Petitioner.

Case No. ~~SI~~ SI-2010-16

OAH No. 2010020196

DECISION

The California Board of Accountancy heard this matter on March 25, 2010, in San Jose. The following Board members were present: Manuel Ramirez, CPA (President); Sarah (Sally) Anderson, CPA (Vice-President); Marshal Oldman, Esq. (Secretary/Treasurer); Diana L. Bell; Angela Chi, CPA; Michelle R. Brough, Esq.; Donald A. Driftmier, CPA; Louise Kirkbride; Leslie J. LaManna, CPA; Robert Petersen, CPA; David L. Swartz, CPA; and Lenora Taylor, Esq. Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, presided.

Scott Harris, Deputy Attorney General, represented the Attorney General's Office.

Angelo L. Rosa, Attorney at Law, represented Petitioner Bernard Joseph Rosa, Jr., who was present.

FACTUAL FINDINGS

1. The California Board of Accountancy (Board) issued CPA Certificate No. 14669 to Bernard Joseph Rosa, Jr. (Petitioner) on June 20, 1969.

2. Effective March 24, 1994, the Board ordered Petitioner's certificate revoked. The revocation order was stayed and the certificate was placed on probation for three years. The terms and conditions of probation included a two-month suspension. Petitioner was also ordered to pay \$5,000 to the Board as reimbursement for costs of investigation and prosecution.

The Board's action was based upon a stipulated settlement. Petitioner admitted to unprofessional conduct by the commission of acts of misleading advertising, failure to comply with continuing education requirements, breach of fiduciary responsibility, fraud, dishonesty, and gross negligence in the practice of public accountancy.

3. Petitioner did not comply with the terms of the probationary order. Consequently, an Accusation and Petition to Revoke Probation was filed. An evidentiary hearing was held. On December 28, 1995, the Board set aside the stay and imposed the revocation previously ordered.

The Decision's factual findings included practicing with a suspended license, failure to obey all laws, failure to timely submit quarterly reports, failure to timely notify the Board of out-of-state residence or practice, failure to take and pass an ethics course, failure to pay \$5,000 in costs and failure to complete 80 hours of continuing education. In pertinent part, the Decision states:

[Petitioner] has demonstrated a significant resistance to the Board's efforts to regulate his professional activities for which a certificate is required. He considers the Board's previous disciplinary action a nuisance, and his resistance to meeting his later obligations as a result certainly attest to the fact that his opinion has not changed.

In addition, Petitioner was ordered to pay the Board \$10,500.37 as reimbursement for the costs of investigation and prosecution.

4. On September 17, 1999, Petitioner filed his first Petition for Reinstatement of Revoked Certificate. He appeared before the Board, but failed to provide substantial evidence of rehabilitation. Effective November 21, 1999, the Petition was denied.

In pertinent part, the Decision states:

[Petitioner] displayed a lack of candor and cooperation to the Board during the investigation involving the Petition and displayed a lack of candor and contrition in his testimony to this Board during the hearing on the petition.

5. On October 19, 2000, Petitioner filed his second Petition for Reinstatement of Revoked Certificate. He appeared before the Board, but failed to provide substantial evidence of rehabilitation. Effective April 19, 2001, the Petition was denied.

6. On May 6, 2002, Petitioner filed his third Petition for Reinstatement of Revoked Certificate. He appeared before the Board, but failed to provide substantial evidence of rehabilitation. Effective October 31, 2002, the Petition was denied.

In pertinent part, the Decision states:

Petitioner's effort at reinstatement rests primarily on the passage of time. There is no evidence proffered this tribunal that demonstrates sustained self-awareness by petitioner except in the context of self-serving testimony parroting the insight expressed by another and prior petitioner appearing before the Board.

7. On November 4, 2003, Petitioner filed his fourth Petition for Reinstatement of Revoked Certificate. He appeared before the Board, but it was found that Petitioner continued to lack credibility in his representations and that "his expressions of remorse were belied by other portions of his testimony." On March 30, 2004, the Petition was denied and Petitioner was ordered not to petition for reinstatement for at least three years.

8. On approximately December 23, 2009, Petitioner filed his fifth Petition for Reinstatement of Revoked Certificate. This hearing followed.

9. Petitioner represents that his attitude towards the Board and the practice of accountancy has greatly changed in recent years. He now accepts full responsibility for his prior actions. Petitioner notes that it has been 14 years since his license was revoked, and he has refrained from any other wrongful behavior since that time. Petitioner is grateful to the Board for the lessons learned in humility and the necessity of conformance to standards.

10. Since Petitioner last appeared before the Board, he has worked as the chief financial officer for The Tides Wharf in Bodega Bay. Following that position, he was unemployed from September of 2009 to February of 2010. Currently, he is employed by a family operated winery, Pezzi King Vinyards, as the controller. In that position, he works closely with the owner, Jim Rowe.

If re-licensed, Petitioner plans to expand his small practice through referrals, and thus enhance his financial situation. He has not been able to pay the ordered costs because of other financial obligations and the need to save for retirement. Petitioner is currently 67 years of age.

11. Petitioner completed 107 hours of continuing professional education between September 2007 and January 2010. He has also studied law. In addition, on March 13, 2010, he completed an interactive, four-credit self-study course entitled "Ethics for California CPAs."

12. Petitioner submitted three reference letters. In an undated letter, Eugene Bugatto, President of Robert Bugatto Enterprises, Inc., wrote that Petitioner worked for The Tides as Chief Financial Officer and that he capably handled responsibilities that included "financials, payroll and human resources."

On March 18, 2010, Tom Fields wrote that Petitioner has been his accountant and tax consultant for over 25 years. Fields has always found Petitioner "to be honest in his approach towards taxes and business affairs in general." In addition, Fields believes Petitioner to be "a credit to his profession and the community at large," and urges the Board to reinstate his license.

On March 22, 2010, Jim Rowe, President & CEO Pezzi King Vineyards, confirmed Petitioner's employment since February 25, 2010. In pertinent part, he wrote:

During this period, he has been instrumental in resolving prior years unacceptable accounting practices, and has assisted using the application of Generally Accepted Accounting Principles and has helped get our current records in professional order. Additionally, he has assisted in our case management and vital financial projections that are consistent with the work of a Certified Public Accountant.

[¶] ... [¶]

I also feel that he will again be a credit for his profession and I know of no reason why he should not be reinstated as a CPA.

13. It is found that Petitioner has demonstrated sufficient rehabilitation so that re-licensure, under certain conditions, would not be against the public interest. Petitioner's expressions of remorse and respect for the Board's authority were credible and welcomed.

LEGAL CONCLUSION

Petitioner demonstrated that, subject to the satisfaction of certain conditions precedent, he is sufficiently rehabilitated to safely practice as a certified public accountant. Cause therefore exists to reinstate his license. If Petitioner satisfies the conditions in the time allotted, he shall be issued a probationary license for two years pursuant to terms and conditions.

ORDER

A. The Petition for Reinstatement of Bernard Joseph Rosa, Jr. is granted in that Petitioner's license will be placed on probation for two years following proof of compliance with the following conditions precedent.

1. **Cost Reimbursement**

Petitioner shall pay the Board \$14,900.36, which is the total outstanding balance of the cost reimbursement previously ordered. Payment in full must be made no later than 100 days from the effective date of this decision.

2. **Continuing Education Course**

Petitioner shall complete and provide proper documentation of 16 hours of professional education concerning Statements on Standards for Accounting and Review Services (SSARS). The SSARS instruction must be completed no later than 100 days from the effective date of this decision.

B. Following completion of the above-described conditions precedent, Petitioner's license will be reinstated, then immediately revoked. The revocation will be stayed and the license placed on probation for two years pursuant to the following terms and conditions:

1. **Supervised Practice**

Within 30 days of the date his license is reinstated on probationary status, Petitioner shall submit to the Board or its designee for its prior approval a plan of practice that shall be monitored by another CPA or PA who provides periodic reports to the Board or its designee. Petitioner shall pay all costs for such monitoring.

2. **Obey All Laws**

Petitioner shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. **Submit Written Reports**

Petitioner shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. Petitioner shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Petitioner's compliance with all the terms and conditions of probation. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. **Personal Appearances**

Petitioner shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. **Comply With Probation**

Petitioner shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of Petitioner's compliance with probation terms and conditions.

6. **Practice Investigation**

Petitioner shall be subject to, and shall permit, a practice investigation of Petitioner's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. **Comply With Citations**

Petitioner shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

8. **Tolling of Probation for Out-of-State Residence/Practice**

In the event Petitioner should leave California to reside or practice outside this state, Petitioner must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period. No obligation imposed herein, including requirements to file written reports and to reimburse the Board costs, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.


9. **Violation of Probation**

If Petitioner violates probation in any respect, the Board, after giving Petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. Completion of Probation

Upon successful completion of probation, Petitioner's license will be fully restored.

DATED: May 24, 2010


MANUEL RAMIREZ, CPA
President, California Board of Accountancy

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of the State of California
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8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)	No. AC 93-11
Against:)	
12)	<u>STIPULATION</u>
BERNARD JOSEPH ROSA, JR., CPA)	
13 P.O. Box 10527)	
14 South Lake Tahoe, CA 96158)	
15)	
Certificate No. CPA 14669)	
16 Respondent.)	
17)	

18 Respondent, BERNARD JOSEPH ROSA, JR., and the Board of
19 Accountancy of the State of California (hereinafter "Board")
20 through its counsel Supervising Deputy Attorney General Joel S.
21 Primes, do hereby enter into the following stipulation:

22 1. Respondent, Bernard Joseph Rosa, Jr., hereby
23 acknowledges receipt of Accusation No. AC-93-11, Statement to
24 Respondent and copies of the Notice of Defense form.

25 2. Respondent has fully discussed the charges and
26 allegations contained in said Accusation No. AC-93-11 on file

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1 with the Board and respondent has been fully advised with regard
2 to his rights in this matter.

3 3. Respondent was heretofore issued License No. CPA
4 14669 authorizing him to practice accountancy in the State of
5 California. The certificate expired on or about November 1, 1990
6 because respondent failed to pay the renewal fee and failed to
7 present evidence of compliance with continuing education
8 regulations. Respondent's CPA certificate was renewed, effective
9 September 25, 1991 upon receipt of the renewal fee. However, the
10 respondent provided the Board with no evidence of compliance with
11 the continuing education regulations.

12 4. On or about October 28, 1992, an Accusation bearing
13 number AC-93-11 was filed by Carol Sigmann, Executive Director of
14 the Board.

15 5. Respondent is fully aware of the right to a hearing
16 on the charges and allegations contained in said Accusation No.
17 AC-93-11, his right to reconsideration, appeal and any and all
18 other rights which may be accorded pursuant to the California
19 Administrative Procedure Act and the laws of the State of
20 California.

21 6. Respondent hereby freely and voluntarily waives his
22 right to a hearing, reconsideration, appeal, and any and all
23 other rights which may be accorded by the California
24 Administrative Procedure Act and the laws of the State of
25 California with regard to Accusation No. AC-93-11.

26 7. The parties agree that the stipulation recited
27 herein shall be null and void and not binding upon the parties

1 unless approved by the Board. In the event the Board in its
2 discretion does not approve this settlement, this stipulation
3 then is withdrawn and shall be of no evidentiary value and shall
4 not be relied upon nor introduced in any disciplinary action by
5 either party hereto except that Respondent agrees that should the
6 Board reject this stipulation and if this case proceeds to
7 hearing, respondent will assert no claim that the Board was
8 prejudiced by its review and discussion of this stipulation or of
9 any records relating hereto.

8. This agreement is made for the purpose of settling
Accusation No. AC-93-11. The admissions made herein are for the
purpose of this proceeding and any subsequent proceeding between
the Board of Accountancy and Bernard Joseph Rosa, Jr. or any
action taken by or before any governmental body responsible for
licensing accountants.

16 9. Respondent Bernard Joseph Rosa, Jr. admits that he
17 is guilty of unprofessional conduct pursuant to violations of
18 Business and Professions Code section 5100 of the Code in
19 committing acts of misleading advertising, failure to comply with
20 continuing education requirements, breach of fiduciary
21 responsibility, fraud, dishonesty and gross negligence in the
22 practice of public accountancy as is more particularly set forth
23 hereinafter:

24 A.

25 MISLEADING ADVERTISING

26 On January 11, 1989, and on January 15, 1990,
27 respondent mailed to potential clients in the South Lake Tahoe

1 area letters in which he states that his firm "specializes" in
2 serving the total tax needs of businesses and in which he ensures
3 that his firm can generate tax savings through tax avoidance
4 strategies regarding the self-employment tax.

5 Respondent disseminated misleading information to the
6 South Lake Tahoe community via a letter dated January 11, 1989.
7 Respondent advertised his firm's ability to save clients
8 substantial taxes. Respondent claims that he can save taxpayers
9 who, for example, net \$45,000 a total of \$5,859 every year for a
10 one-time fraction of the savings.

11 In another letter dated March 10, 1989, respondent
12 describes how to implement an equipment leasing arrangement
13 between husband and wife that eliminates self-employment tax paid
14 by the sole proprietor. This tax-avoidance scheme violates
15 income tax law as is outlined herein.

16 B.

17 PRACTICE WITH AN EXPIRED CPA CERTIFICATE

18 Respondent's CPA license (Certificate No. CPA 14669)
19 expired on October 31, 1990. The certificate was not renewed
20 until September 25, 1991. Respondent engaged in a public
21 accounting practice during this eleven month period with an
22 expired permit in violation of Business and Professions Code
23 section 5050.

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1 C.

2 FAILURE TO COMPLETE CONTINUING EDUCATION COURSES

3 Respondent failed to provide documentary evidence of
4 continuing education courses completed for the renewal periods
5 which ended on October 31, 1988 and 1990.

6 D.

7 KNOWING PREPARATION, PUBLICATION
8 AND DISSEMINATION OF
9 MATERIALLY MISLEADING FINANCIAL
10 STATEMENTS, REPORTS AND GROSS
11 NEGLIGENCE IN THE PRACTICE
12 OF PUBLIC ACCOUNTANCY:

13 STAFFORD TAX RETURNS

14 In January 1990 respondent sent out postcards to
15 truckers in which he advertised that he could save them
16 substantial taxes by using a strategy to eliminate
17 self-employment taxes. In February 1990 Mr. Stafford telephoned
18 respondent to obtain the information to lower taxes on his 1989
19 tax returns. Respondent informed Mr. Stafford that he would have
20 to pay a one-time fee of \$1,475.00 to use respondent's "self-
21 employment tax elimination strategy".

22 On March 5, 1990 respondent sent Mr. Stafford a letter
23 and portions of income tax returns for a new client for whom
24 respondent was able to save over \$7,000 in taxes compared to the
25 new client's prior CPA. Mr. Stafford engaged respondent to
26 prepare his 1989 Federal and California tax returns and to set up
27 the equipment leasing arrangement designed to circumvent the
self-employment tax. Respondent assured Mr. Stafford that this
procedure for avoiding self-employment tax had been audited by

1 the Internal Revenue Service (IRS) and was not challenged. Based
2 on these representations, Mr. Stafford utilized Respondent's tax
3 avoidance strategy and engaged him to prepare his 1989 tax
4 returns.

5 In 1990 Mr. Stafford's 1989 Federal return was audited
6 by the IRS. On June 13, 1991 the Staffords were sent a final
7 copy of 1989 IRS Income Tax Examination Changes, which provided
8 additional tax due in the amount of \$5,401 plus \$773 interest.
9 On June 12, 1992 Mr. Stafford was awarded \$2,255 in damages by
10 the El Dorado County Superior Court pursuant to a small claims
11 action he brought against respondent. The damages included
12 respondent's self-employment tax strategy fee of \$1,475, plus
13 penalties and legal costs totaling \$780.00. The judgment has not
14 been satisfied.

15 Mr. Stafford operates a trucking business in the form
16 of a sole proprietorship. Respondent counseled Mr. Stafford to
17 avoid paying taxes on the self-employment earnings as follows:

18 In March 1990 respondent told Mr. Stafford to sign over
19 the pink slip to his truck to his wife effective January 1989.
20 This was done to make it appear to have been a transfer of
21 ownership of the property as of the beginning of the 1989 taxable
22 year. Respondent also instructed Mr. Stafford to sign an
23 equipment lease agreement with his wife effective January 1,
24 1989. The plan was for Mr. Stafford to lease his truck from his
25 wife for an amount sufficient to eliminate or substantially
26 reduce his Schedule C net profit and thus avoid self-employment
27 tax.

1 Rent expenses purportedly paid by Mr. Stafford to his
2 wife would be reported on Schedule C. Rent received by
3 Mrs. Stafford would be reported as rental income on Schedule E:
4 Rental income is not subject to self-employment tax.

5 The IRS disregarded the transfer of property from
6 Mr. Stafford to his wife because there was no arm's-length
7 transaction. The rent expenses of \$38,050 appearing on Schedule
8 C and rent income of \$36,000 appearing on Schedule E of the
9 Stafford's 1989 Federal Tax Returns were thus disallowed.

10 ADDITIONAL TAX RETURNS

11 Respondent has counseled numerous clients to use the
12 'self employment tax elimination strategy'. In the proposed
13 arrangement there is no bona fide truck lease agreement between
14 husband and wife. Respondent's illegal scheme moves income that
15 would be subject to self-employment tax off Schedule C and onto
16 Schedule E where it is taxed only as ordinary income. This
17 scheme requires clients to fraudulently back-date an equipment
18 lease agreement and pink slip and execute a fraudulent truck
19 lease agreement between trucker-husband and wife. Respondent's
20 clients were advised and required to follow this back-dating of
21 the equipment lease and pink slip while fraudulently executing a
22 truck lease agreement to utilize the 'self employment tax
23 elimination strategy'.

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Certificate No. CPA 14669,
26 Certified Public Accountant issued to Bernard Joseph Rosa, Jr.,
27 is revoked; however, said revocation is stayed and respondent is

1 placed on probation for three years on the following terms and
2 conditions:

- 3 A. SUSPENSION. As part of probation, License No. 14669
4 issued to respondent Bernard Joseph Rosa, Jr. is
5 suspended for two months. During this period of
6 suspension respondent shall not engage in any
7 activities for which certification as a Certified
8 Public Accountant or Public Accountant is required.
- 9 B. OBEY ALL LAWS. Respondent shall obey all federal,
10 California, other states' and local laws, including
11 those rules relating to the practice of public
12 accountancy in California.
- 13 C. QUARTERLY REPORTS. Respondent, within 10 days of
14 completion of the quarter shall submit quarterly
15 written reports to the Board on a form obtained from
16 the Board.
- 17 D. APPEARANCE AT ADMINISTRATIVE COMMITTEE MEETINGS.
18 Respondent shall report to and make personal
19 appearances at meetings of the Administrative Committee
20 at the Board's notification, provided such notification
21 is accompanied in a timely manner.
- 22 E. SURVEILLANCE PROGRAM. Respondent shall cooperate fully
23 with the Board of Accountancy, and with any of its
24 agents or employees in their supervision and
25 investigation of his/her compliance with the terms and
26 conditions of this probation including the Board's
27 Probation Surveillance Compliance Program.
- F. FURTHER INVESTIGATION. Respondent shall be subject to,
and shall permit, a practice investigation of the
respondent's professional practice. Such a practice
investigation shall be conducted by representatives of
the Board whenever designated by the Administrative
Committee, provided notification to respondent of such
an investigation is accomplished in a timely manner.
- G. COMPLY WITH ALL BOARD ORDERS. Respondent shall comply
with all final orders resulting from citations issued
by the Board of Accountancy.
- H. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE. In the
event respondent should leave California to reside or
practice outside this State, respondent must notify the
Board in writing of the dates of departure and return.
Periods of non-California residency or practice outside
the State shall not apply to reduction of the
probationary period.

- 1 I. COMPLETION OF PROBATION TERMS. In the event the
2 respondent fails to satisfactorily complete any
3 provision of the order of probation, which failure
4 results in the cessation of practice, all other
5 provisions of probation other than the quarterly report
6 requirements, examination requirements, education
7 requirements, and Administrative Committee appearances,
8 shall be held in abeyance until respondent is permitted
9 to resume practice. All provisions of probation shall
10 recommence on the effective date of resumption of
11 practice. Periods of cessation of practice will not
12 apply to the reduction of the probationary period.
- 13 J. VIOLATION OF PROBATION. If respondent violates
14 probation in any respect, the Board, after giving
15 respondent notice and opportunity to be heard, may
16 revoke probation and carry out the disciplinary order
17 which was stayed. If an accusation or a petition to
18 revoke probation is filed against respondent during
19 probation, the Board shall have continuing jurisdiction
20 until the matter is final, and the period of probation
21 shall be extended until the matter is final.
- 22 K. ETHICS COURSE AND EXAMINATION. Respondent shall take
23 and pass a Board approved ethics course and
24 examination. The exam shall be passed prior to
25 December 1, 1994.
- 26 If respondent fails to pass said examination within the
27 time period provided or within two attempts, respondent
shall so notify the Board and shall cease practice
until respondent takes and successfully passes said
exam, has submitted proof of same to the Board, and has
been notified by the Board that he/she may resume
practice. Failure to pass the required examination no
later than 100 days prior to the termination of
probation shall constitute a violation of probation.
- L. REIMBURSE THE BOARD FOR INVESTIGATION & PROSECUTION
COSTS. Respondent shall reimburse the Board \$5,000 for
its investigation and prosecution costs. The payment
shall be made in thirty (30) equal monthly
installments, the first installment to commence in
thirty (30) days of the effective date of this Board
decision.
- M. LICENSE RESTORED. Upon successful completion of
probation, respondent's license will be fully restored.
- N. CPE COURSES. Respondent shall take and complete 80
hours of CPE courses as directed by the Administrative
Committee, to be completed by October 31, 1994. These
courses are in addition to the continuing education
hours required for license renewal.

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CONTINGENCY

This stipulation shall be subject to the approval of the Board. If the Board fails to adopt this stipulation as its Order, the stipulation shall be of no force or effect for either party, nor shall it be mentioned or referred to in any legal action between the parties.

ACCEPTANCE

I have read the above Stipulated Settlement and Disciplinary Order, understand their terms, and agree to be bound thereby.

DATED: 12.23.93



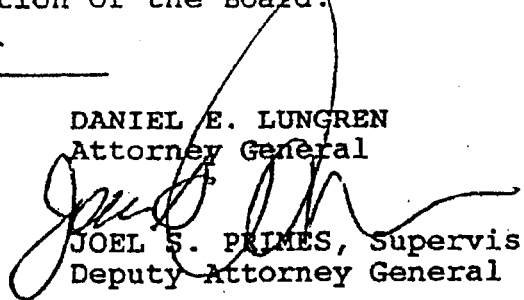
Bernard Joseph Rosa, Jr.
Certified No. CPA 14669
Certified Public Accountant

ENDORSEMENT

The attached stipulation is hereby respectfully submitted for the consideration of the Board.

DATED: Jan. 26, 1994

DANIEL E. LUNGREN
Attorney General



JOEL S. PRIMES, Supervising
Deputy Attorney General

Attorneys for Complainant

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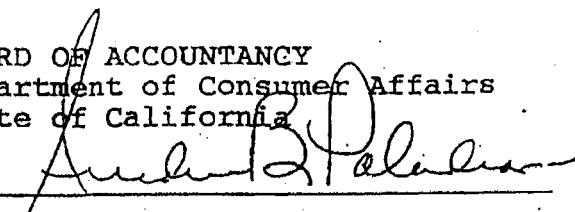
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DECISION AND ORDER

The foregoing is adopted as the Decision of the Board of Accountancy in this matter, and shall become effective on the 24TH day of MARCH, 1994.

IT IS SO ORDERED THIS 24TH day of MARCH 1994.

BOARD OF ACCOUNTANCY
Department of Consumer Affairs
State of California

BY 

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of the State of California
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6 Attorneys for Complainant

7
8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)	No. AC-93-11
Against:)	
12)	<u>ACCUSATION</u>
BERNARD JOSEPH ROSA, JR., CPA)	
13 P.O. Box 10527)	
South Lake Tahoe, CA 96158)	
14)	
15 Certificate No. CPA 14669)	
16 Respondent.)	

17
18 Carol Sigmann, the complainant herein, alleges as
19 follows:

20 1. She is the Executive Officer of the Board of
21 Accountancy of the State of California (hereinafter "Board") and
22 makes and files this accusation in her official capacity as such
23 and not otherwise.

24 2. On or about June 20, 1969, respondent Bernard
25 Joseph Rosa, Jr. (hereinafter "respondent") was issued
26 certificate number CPA 14669 to practice accountancy under the
27 laws of the State of California. The certificate expired on or

1 about November 1, 1990 because respondent failed to pay the
2 renewal fee and failed to present evidence of compliance with
3 continuing education regulations. Respondent's CPA certificate
4 was renewed, effective September 25, 1991 upon receipt of the
5 renewal fee. However, the respondent provided the Board with no
6 evidence of compliance with the continuing education regulations.

7 3. Section 118, subdivision (b), of the Business and
8 Professions Code (hereinafter "the Code") provides, in pertinent
9 part, that the expiration of a license issued by a board shall
10 not, during any period in which it may be renewed, restored,
11 reissued or reinstated, deprive the board of its authority to
12 institute or continue a disciplinary proceeding against the
13 licensee upon any ground provided by law or to enter an order
14 suspending or revoking a license or otherwise taking disciplinary
15 action against the licensee under any such grounds.

16 4. Section 5100 of the Code provides that a
17 certificate may be disciplined for unprofessional conduct which
18 includes, but is not limited to, the grounds set forth in said
19 section.

20 5. Section 5100, subdivision (h), of the Code provides
21 that fiscal dishonesty or breach of fiduciary responsibility of
22 any kind constitutes unprofessional conduct.

23 6. Section 5100, subdivision (c), of the Code
24 provides, in pertinent part, that dishonesty, fraud or gross
25 negligence in the practice of public accountancy constitutes
26 unprofessional conduct.

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1 7. Section 5100, subdivision (i), provides that
2 knowing preparation, publication or dissemination of false,
3 fraudulent, or materially misleading financial statements;
4 reports, or information constitutes unprofessional conduct.

5 8. Business and Professions Code section 5050
6 provides:

7 "No person shall engage in the practice of public
8 accountancy in this State unless such person is the holder
9 of a valid permit to practice public accountancy issued by
10 the board; provided, however, that nothing in this chapter
11 shall prohibit a certified public accountant or a public
12 accountant of another state, or any accountant of a foreign
country lawfully practicing therein, from temporarily
practicing in this State on professional business
incident to his regular practice in another state or
country."

13 9. Business and Professions Code section 5051
14 provides:

15 "Except as provided in Sections 5052, 5053, and 5054, a
16 person shall be deemed to be engaged in the practice of
public accountancy within the meaning and intent of this
chapter if he or she does any of the following:

17 "(a) . . . Holds himself or herself out to the public in
18 any manner as one skilled in the knowledge, science and
19 practice of accounting, and as qualified and ready to render
professional service therein as a public accountant for
compensation.

20 "(b) Maintains an office for the transaction of business
21 as a public accountant.

22 "(c) Offers to prospective clients to perform for
23 compensation, or who does perform on behalf of clients for
24 compensation, professional services that involve or require
an audit, examination, verification, investigation,
certification, presentation, or review, of financial
transactions and accounting records.

25 "(d) Prepares or certifies for clients reports on audits
26 or examinations of books or records of account, balance
27 sheets, and other financial, accounting and related
schedules, exhibits, statements, or reports which are to be
used for publication or for the purpose of obtaining credit
or for filing with a court of law or with any governmental

1 agency, or for any other purpose.

2 "(e) In general or as an incident to that work renders
3 professional services to clients for compensation in any or
4 all matters relating to accounting procedure and to the
recording, presentation, or certification of financial
information or data.

5 "(f) Keeps books, makes trial balances, or prepares
6 statements, makes audits, or prepares reports, all as a part
of bookkeeping operations for clients.

7 "(g) Prepares or signs as the tax preparer, tax returns
8 for clients.

9 "(h) Prepares personal financial or investment plans or
provides to clients products or services of others in
10 implementation of personal financial or investment plans.

11 "(i) Provides management consulting services to clients.

12 "The activities set forth in subdivisions (f) to (i),
13 inclusive, are 'public accountancy' only when performed by a
certified public accountant or public accountant, as defined
in this chapter.

14 "A person is not engaged in the practice of public
15 accountancy if the only services he or she engages in are
those defined by subdivisions (f) to (i), inclusive, and he
16 or she does not hold himself or herself out, solicit, or
advertise for clients using the certified public accountant
17 or public accountant designation. A person is not holding
himself or herself out, soliciting or advertising for
18 clients within the meaning of this section solely by reason
of displaying a CPA or PA certificate in his or her office
19 or identifying himself or herself as a CPA or PA on other
than signs, advertisements, letterhead, business cards,
20 publications directed to clients or potential clients, or
financial or tax documents of a client."

21 10. Business and Professions Code section 5055

22 provides:

23 "Any person who has received from the board a certificate
24 of certified public accountant and holds a valid permit to
practice under the provisions of this chapter shall be
~~styled and known as a 'certified public accountant' and may~~
25 also use the abbreviation 'C.P.A.' No other person, except
a partnership registered under Sections 5072 and 5073, shall
26 assume or use that title, designation, or abbreviation or
any other title, designation, sign, card or device tending
27 to indicate that the person using it is a certified public
accountant."

1 11. California Code of Regulations, Title 16, Article
2 9, Section 63 provides:

3 "A certified public accountant or a public accountant
4 shall not advertise in any manner which is false,
5 fraudulent, or misleading in violation of Section 17500 of
6 the Business and Professions Code."

7 12. California Code of Regulations, Title 16, Article
8 12, Section 87(a) provides:

9 (a) 80 Hours.

10 "A licensee shall not engage in public practice as
11 defined in Business and Professions Code Section 5051 or any
12 activities referred to in Rule 5, in California, unless
13 during the two-year period immediately preceding permit
14 renewal the licensee has completed at least 80 hours of
15 qualifying continuing education and submitted the statement
16 required by Section 89. No carryover is permitted from one
17 two-year period to another."

18 13. Code of Federal Regulations, Title 31, Part 10,
19 Section 10.22 incorporated in Treasury Department Circular 230,
20 Rules of Practice Before the Internal Revenue Service, provides
21 that each attorney, certified public accountant, enrolled agent,
22 or enrolled actuary shall exercise due diligence:

23 "(a) In preparing, or assisting in the preparation of,
24 approving, and filing returns, documents,
25 affidavits, and other papers relating to Internal
26 Revenue Service matters;

27 "(b) In determining the correctness of oral or written
28 representations made by him to the Department of
29 the Treasury; and

30 "(c) In determining the correctness of oral or written
31 representations made by him to clients with
32 reference to any matter administered by the
33 Internal Revenue Service."

34 14. Statement on Responsibilities in Tax Practice
35 No. 1, issued by the Federal Taxation Executive Committee of the
36 American Institute of Certified Public Accountants, states that
37

1 with respect to tax return positions, a CPA should comply with
2 standards, which include the following:

3 "(a) A CPA should not recommend to a client that a
4 position be taken with respect to the tax
5 treatment of any item on a return unless the CPA
6 has a good faith belief that the position has a
 realistic possibility of being sustained
 ~~administratively or judicially on its merits if~~
 challenged.

7 "(b) A CPA should not prepare or sign a return as an
8 income tax return preparer if the CPA knows that
 the return takes a position that the CPA could not
 recommend under the standard expressed above."

10 15. Respondent is subject to disciplinary action
11 pursuant to section 5100 of the Code in committing acts of
12 misleading advertising, failure to comply with continuing
13 education requirements, breach of fiduciary responsibility,
14 fraud, dishonesty and gross negligence in the practice of public
15 accountancy as more particularly alleged hereinafter:

16 A.

FALSE AND MISLEADING ADVERTISING

18 On January 11, 1989, and on January 15, 1990,
19 respondent mailed to potential clients in the South Lake Tahoe
20 area letters in which he states that his firm "specializes" in
21 serving the total tax needs of businesses and in which he ensures
22 that his firm can generate tax savings through tax avoidance
23 strategies regarding the self-employment tax.

24 Respondent disseminated false and misleading
25 information to the South Lake Tahoe community via a letter dated
26 January 11, 1989. Respondent advertised his firm's ability to
27 save clients substantial taxes. Respondent claims that he can

1 save taxpayers who, for example, net \$45,000 a total of \$5,859
2 every year for a one-time fraction of the savings.

3 In another letter dated March 10, 1989, respondent
4 describes how to implement an equipment leasing arrangement
5 between husband and wife that eliminates self-employment tax paid
6 by the sole proprietor. This tax-avoidance scheme violates
7 income tax law as is outlined herein.

8 B.

9 PRACTICE WITH AN EXPIRED CPA CERTIFICATE

10 Respondent's CPA license (Certificate No. CPA 14669)
11 expired on October 31, 1990. The certificate was not renewed
12 until September 25, 1991. Respondent engaged in a public
13 accounting practice during this eleven month period with an
14 expired permit in violation of Business and Professions Code
15 section 5050.

16 C.

17 FAILURE TO COMPLETE CONTINUING EDUCATION COURSES

18 Respondent failed to provide documentary evidence of
19 continuing education courses completed for the renewal periods
20 which ended on October 31, 1988 and 1990.

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22 ///

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D.

KNOWING PREPARATION, PUBLICATION
AND DISSEMINATION OF FALSE, FRAUDULENT
AND MATERIALLY MISLEADING FINANCIAL
STATEMENTS, REPORTS AND DISHONESTY,
FRAUD AND GROSS NEGLIGENCE IN THE
PRACTICE OF PUBLIC ACCOUNTANCY:

STAFFORD TAX RETURNS

In January 1990 respondent sent out postcards to truckers in which he advertised that he could save them substantial taxes by using a strategy to eliminate self-employment taxes. In February 1990 Mr. Stafford telephoned respondent to obtain the information to lower taxes on his 1989 tax returns. Respondent informed Mr. Stafford that he would have to pay a one-time fee of \$1,475.00 to use respondent's "self-employment tax elimination strategy".

On March 5, 1990 respondent sent Mr. Stafford a letter and portions of income tax returns for a new client for whom respondent was able to save over \$7,000 in taxes compared to the new client's prior CPA. Mr. Stafford engaged respondent to prepare his 1989 Federal and California tax returns and to set up the equipment leasing arrangement designed to circumvent the self-employment tax. Respondent assured Mr. Stafford that this procedure for avoiding self-employment tax had been audited by the Internal Revenue Service (IRS) and was not challenged. Based on these representations, Mr. Stafford utilized Respondent's tax avoidance strategy and engaged him to prepare his 1989 tax returns.

///

1 In 1990 Mr. Stafford's 1989 Federal return was audited
2 by the IRS. On June 13, 1991 the Staffords were sent a final
3 copy of 1989 IRS Income Tax Examination Changes, which provided
4 additional tax due in the amount of \$5,401 plus \$773 interest.
5 On June 12, 1992 Mr. Stafford was awarded \$2,255 in damages by
6 the El Dorado County Superior Court pursuant to a small claims
7 action he brought against respondent. The damages included
8 respondent's self-employment tax strategy fee of \$1,475, plus
9 penalties and legal costs totaling \$780.00. The judgment has not
10 been satisfied.

11 Mr. Stafford operates a trucking business in the form
12 of a sole proprietorship. Respondent counseled Mr. Stafford to
13 avoid paying taxes on the self-employment earnings as follows:

14 In March 1990 respondent told Mr. Stafford to sign over
15 the pink slip to his truck to his wife effective January 1989.
16 This was done to make it appear to have been a transfer of
17 ownership of the property as of the beginning of the 1989 taxable
18 year. Respondent also instructed Mr. Stafford to sign an
19 equipment lease agreement with his wife effective January 1,
20 1989. The plan was for Mr. Stafford to lease his truck from his
21 wife for an amount sufficient to eliminate or substantially
22 reduce his Schedule C net profit and thus avoid self-employment
23 tax.

24 Rent expenses purportedly paid by Mr. Stafford to his
25 wife would be reported on Schedule C. Rent received by
26 Mrs. Stafford would be reported as rental income on Schedule E:
27 Rental income is not subject to self-employment tax.

1 The IRS disregarded the transfer of property from
2 Mr. Stafford to his wife because there was no arm's-length
3 transaction. The rent expenses of \$38,050 appearing on Schedule
4 C and rent income of \$36,000 appearing on Schedule E of the
5 Stafford's 1989 Federal Tax Returns were thus disallowed.

6 ADDITIONAL TAX RETURNS

7 Respondent has counseled numerous clients to use the
8 'self employment tax elimination strategy'. In the proposed
9 arrangement there is no bona fide truck lease agreement between
10 husband and wife. Respondent's illegal scheme moves income that
11 would be subject to self-employment tax off Schedule C and onto
12 Schedule E where it is taxed only as ordinary income. This
13 scheme requires clients to fraudulently back-date an equipment
14 lease agreement and pink slip and execute a fraudulent truck
15 lease agreement between trucker-husband and wife. Respondent's
16 clients were advised and required to follow this back-dating of
17 the equipment lease and pink slip while fraudulently executing a
18 truck lease agreement to utilize the 'self employment tax
19 elimination strategy'.

20 NOTICE IS HEREBY GIVEN that pursuant to the provisions
21 of section 5107 of the Code, the Board seeks recovery for costs
22 of investigation and prosecution up to the administrative hearing
23 in this action.

24 WHEREFORE, complainant prays that a hearing be held,
25 and if the charges set forth herein are found to be true, the
26 Board of Accountancy discipline Certificate No. CPA 14669 issued

27 ///

1- to Bernard Joseph Rosa, Jr. to practice as a Certified Public
2 Accountant in the State of California and take such other action
3 as the Board deems proper.

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5 DATED: May 6, 1993

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Carol Sigmann

CAROL SIGMANN
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California